CF0000062312

"allotted by the High Court Legal Services Committee"

(2)

Division Bench (Crimna

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

CRIM.APPEAL No. 1918 OF 1999

APPELLANT- (IN JAIL)

Warasa Dewa s/o Nanda Muriya, aged about 27 yrs, r/o Mosalnar ,Khalepara, P.S. Bhansa ,Distt-Dantewada, Bastar(MP).

9904

24/3/99

S.K. Kale

Vs-

RESPONDENT- State of Madhya Pradesh

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE

CONVICTION

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 1918/99 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.V.K. SHRIVASTAVA, JJ

21.9.2006

Mr. Jitendra Gupta, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. U.K.S. Chandel, Panel Lawyer for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 22.6.1999 passed by learned 3rd Additional Sessions Judge, Jagdalpur in Sessions Trial No.35/99, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing murder of his wife namely Varsa Maso, convicted him under Section 302 of the I.P.C, sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The prosecution case, in brief, is that in the night of 16.12.1998 at about 8.00 p.m. when Smt. Maso was with her mother in her house, accused/appellant Vaarsa Deva, who is the husband of Smt. Maso, came with bow & arrow and shot arrow on Maso, which hit on the left side of her back, pierced inside her body and punctured the heart & lung. PW-2 Telami Bijjo, mother of Maso, reported the matter in the Police Station Bhansi on the same day at 23.15 hrs, on which the Station House Officer registered the

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case under Section 307 of the IPC. Maso was taken to the Mini Primary Health Centre, Kiranudul where on the next day i.e. 17.12.1998 at about 12.30 p.m. Maso succumbed to the injuries, on which a merg intimation (Ex.P-9) was sent to the Police Station Kirandul. After receiving the merg intimation the offence was converted into Section 302 of the IPC, the Investigating Officer left for the hospital and prepared the Panchnama (Ex.P-10) of the dead body of deceased Maso. Dr. K.L. Suryavanshi (PW-6), who conducted the postmortem on the body of Maso and prepared the postmortem report Ex.P-8, has found that there was a stab injury in the left side of back on upper lobe II part from posterior surface and in his opinion death was due to excessive bleeding and injury to lung & heart, which lead to cardio respiratory arrest and nature of death was homicidal. The accused/appellant while in police custody gave memorandum (Ex.P-1) regarding bow & arrows and in pursuance of that bow & arrows were taken into possession under Ex.P-2. Site plan (Ex.P-5) of the place of occurrence was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of learned Chief Judicial Magistrate, Dantewada, who in turn committed the case to learned Sessions Judge, Jagdalpur from where learned 3rd Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish the offence against the accused/appellant examined seven witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant

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under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and learned counsel for the accused, convicted & sentenced the accused in the manner as mentioned above.

Even though in this case Mr. Ratindra Mishra, Advocate was appointed counsel on behalf of the accused/appellant by the High Court Legal Aid Committee, but he did not appear, therefore, Mr. Jitendra Gupta, Advocate was appointed by the Court on behalf of the accused to argue the appeal and accordingly, we have heard the arguments of Mr. Jitendra Gupta, Advocate for accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Chandel P.L. for the State.

Learned counsel for the accused/appellant has not disputed the homicidal death of Maso. Apart from the ocular evidence of PW-2 Telami Bijjo, mother of deceased, who witnessed the crime, from perusal of the medical evidence of Dr. K.L. Suryavanshi (PW-6), who conducted the postmortem and prepared the postmortem report (ex.P-8), it is established that the death of deceased was homicidal in nature.

As far as the involvement of accused/appellant in committing the crime in question is concerned, PW-2 Telami Bijjo, mother of deceased, has categorically stated in her evidence that at the time of incident, she was at her residence and Maso was standing near the window. As accused used to quarrel with Maso, therefore, she brought her back to her residence. On the

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fateful day, in the evening when Maso was standing near the window, accused came with bow & arrow and shot an arrow on her daughter Maso, which hit on left side of her back, pierced inside her body and as a result of which blood started oozing out of it. She informed the village Sarpanch and thereafter lodged the report (Ex.P-3) in the police station. She has categorically stated that she saw in the light of burning lamp that the accused after shooting arrow on her daughter ran away with bow and remaining arrows. The above evidence stands corroborated by the evidence of PW-4,Atra Gagru, who has stated that on the fateful day in the evening he saw the accused running away towards the forest carrying bow & arrows in his hand. His house is near the house of Telami Bijjo, when he heard the screams of Telami Bijjo, he went to the house of Telami Bijjo and saw the pierced arrow in the back of Maso. In the cross-examination, this witness has stated that it is incorrect to say that he was not able to see the accused running away. He saw him from a distance of 100 meters. He has further stated that accused used to quarrel and beat deceased Maso, therefore, Maso came to her mother's house. The evidence of these two witnesses stand corroborated by the postmortem report (Ex.P-8) that a wound of arrow on the body of deceased was found. Even the bow & remaining arrows were recovered by the Investigating Officer Shri T.R. Nagwanshi (PW-5) at the instance of accused/appellant.

Therefore in view of the above evidence, it is established that the accused was the author of crime in question because he used to quarrel with his deceased wife and that is why PW-2 Telami Bijjo, mother of deceased

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took Maso back to her home and thereafter the accused was seen shooting the arrow at the deceased by PW-2 Telami Bijjo.

Learned counsel for the accused/appellant argued that the manner in which crime was committed, it cannot be held that the accused/appellant shot arrow at the deceased with the intention to cause her death and therefore, offence against the accused/appellant does not travel beyond Section 304 Part II of the IPC.

On the other hand, learned Additional Public Prosecutor supported the judgment of the trial court.

It is evident from the evidence that when arrow was shot by the accused, the deceased was in her house and arrow was shot from a window which hit on the back of the deceased and incidentally that arrow entered from such a place that damaged the lung and heart of the deceased. There was dispute between the deceased & accused, therefore, the deceased was residing with her mother and as such, out of frustration the accused appears to have shot the arrow which unfortunately landed at such a place that damaged the heart & lung of the deceased. Therefore, from the above fact, it cannot be inferred that the accused/appellant shot the arrow with the intention to cause death of deceased Maso. However, it can safely be inferred that when the accused shot the arrow on the deceased he had the knowledge that by shooting an arrow on the deceased he may likely to cause her death. Therefore, the offence under Section 304 Part II of IPC is made out against the accused/appellant.

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	In the result, the appeal partly succeeds, the conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are hereby set aside and instead thereof, he is convicted under Section 304 Part II of the IPC and sentenced to undergo R.I. for 8 years. Accused/appellant is said to have in detention since 29.12.1998, therefore, he shall be entitled for set-off for the above detention period. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **V.K.Shrivastava** **Judge**

[redacted]/-